IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 4187 of 2006()

CRA.105/2006 of SESSIONS COURT, KOLLAM
S.T.2321/2004 of JUDL.MAGISTRATE OF FIRST CLASS-III, PUNALUR

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REVN. PETITIONER: APPELLANT/ACCUSED:

SAKEER HUSSAIN, S/O. MAIDEEN KUNJU,
KANJIHARA KIZHAKKTHIL, KARIKODE, KOLLAM.

BY ADV. SRI. PREMCHAND R.NAIR

RESPONDENTS/RESPONDENTS/COMPLAINANT& STATE:

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1. M.P.RAGHU, SECRETARY,
VILAKKUDY GRAMA PANCHAYATH,
KUNNICODE.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV. SHRI C.K. SURESH.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 04/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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CRL. R.P. 4187 OF 2006

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Dated this the 4th December , 2006

O R D E R

The Secretary of Vilakkudy Grama Panchayat filed a complaint under section 210 of the Kerala Panchayat Raj Act against the petitioner herein, which was numbered as S.T.No. 2321/04 on the file of the court of the Judicial Magistrate of the First Class-III, Punalur. The petitioner/accused had taken the right for conducting a meat stall in the public market during the year 2003-04. The right was auctioned by the Panchayat and the petitioner was the successful bidder. The petitioner did not pay the instalments in full. The balance outstanding was Rs. 91,109/-. All the efforts made by the Panchayat to realise the amount were futile. Since the Panchayat could not realise the amount from the petitioner, as a last resort, the complaint was filed.

2. It has come out in evidence that the bid amount, for which the auction was confirmed in favour of the petitioner, was Rs. 3,40,500/- and it was to be remitted in three instalments. It is proved that the petitioner committed default in payment of instalments. It is also proved that a sum

of Rs.91,109/- is due to the Panchayat from the petitioner. The trial court considered the evidence of P.Ws.1 and 2 and Exts. P2, P3, P5, P5 (a) and P7 and came to the conclusion that the petitioner/ accused committed default in paying the bid amount and that the effort made by the Panchayat to attach the property of the petitioner was impracticable. A contention was put forward on behalf of the petitioner that the complaint is barred by limitation. It was contended before the trial court that the transaction involved was of the year 2003-04 and the agreement was entered into on 26.04.2003. The last instalment was payable on 30.09.2003. It was contended that section 210 of the Panchayat Raj Act contemplates prosecution against the defaulter and the quantum of sentence is provided in Rule 27 of the Kerala Panchayat Raj (Taxation, Levy and Appeal)Rules 1996, which provides for imposing a sentence of fine not exceeding twice the defaulted amount. The petitioner raised a contention that the sentence being only fine, the period of limitation applicable is six months under section 468 of the Code of Criminal Procedure. The trial court negatived the contention that the complaint is barred by limitation on the ground that the limitation starts not from the date of default but from

the date when it was found that the attachment was impracticable. The attempt to attach the property having been made on 02.11.2004 and the complaint having been filed on 28.12.2004, it was held by the trial court that the complaint is not barred by limitation. The trial court found the petitioner guilty and sentenced him to pay fine of Rs.91,609 under rule 27 of the Kerala Panchayat Raj (Taxation, Levy and Appeal)Rules 1996 and in default of payment of fine to undergo simple imprisonment for a period of two months. The fine amount, on its realisation, was directed to be paid to the Secretary of the Panchayat under section 357(1) of the Code of Criminal Procedure.

3. On appeal by the petitioner, the appellate court confirmed the conviction and sentence imposed by the trial court . As regards the plea of limitation, the appellate court held that under section 243 of the Kerala Panchayat Raj Act , the period of limitation is three years and the complaint having been filed within two years' from the date of execution of Ext.P3 agreement, it is not barred by limitation. Section 243 of the Kerala Panchayat Raj Act reads thus:

> *"Limitation for recovery of dues: (1) No distraint shall be made, no suit shall be instituted and no prosecution*

shall be commenced in respect of any tax or other sum due to a Panchayat under this Act or any rule or bye-law, or order made under it after the expiration of a period of three years from the date on which the distraint might first have been made, a suit might first have been instituted or the prosecution might first have been commenced, as the case may be, in respect of such tax or sum;

Provided that in the case of assessment under sub-section (2) the above said period of three years shall be computed from the date on which distraint, suit or prosecution might first have been made, instituted or commenced , as the case may be, after making such assessment.

(2) Notwithstanding anything contrary to this contained in this Act or the rules made thereunder, where for any reason, a person liable to pay any tax or fees leviable under this Act has escaped assessment, the Secretary may at any time within four years from the date on which such tax should have been assessed , serve on him a notice assessing the tax or fee due and demand the payment within fifteen days from the date of serving such notice and thereupon the provisions of this Act and the rules made thereunder shall apply as if the assessment of such tax or fee was made in time.

(3) Where any tax or other amount due to a Panchayat has been barred by limitation under sub-section (1), due to the default of taking steps at the appropriate time and it is found in a lawful enquiry that it was lost due to the default of any officer or officers, the amount so lost to the Panchayat shall be realised with twelve percent interest thereon from such officer or officers.

4. In the light of sub section (1) of section 243, the period of

limitation commences from the date on which the destraint might first have been made. Even if the period of limitation is construed as six months, the complaint was filed within the period of limitation. Therefore, the contention raised by the petitioner that the complaint is barred by limitation has no force. The court below rightly held that the petitioner is guilty of the offence . The fine imposed is also just and reasonable. No grounds are made out for interference under section 397 of the Code of Criminal Procedure . The Crl. Revision Petition is therefore dismissed.

5. Learned counsel for the petitioner submits that the petitioner could not conduct the business for the full term and he has sustained heavy loss. He also submits that the petitioner could not continue the business due to the decisions taken on political intervention and that he is in utter financial difficulty. Counsel for the petitioner submits that six months' time may be granted to the petitioner to pay the fine amount. Taking into account the facts and circumstances of the case, I am inclined to grant three months' time to the petitioner to pay the fine amount. Since no interference is being made in the conviction and sentence, it is not necessary to issue notice to the first respondent .

6. In the result, the Crl. Revision Petition is dismissed. However, three months' time is granted to the petitioner to pay the fine amount. The default sentence shall be kept in abeyance for a period of three months.

A copy of this order shall be sent to the Secretary of Vilakkudy Grama Panchayat, the first respondent in the Revision.

K.T. SANKARAN,
JUDGE.

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